

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

DATE: April 10, 2009

REGULATION FILE: REG-2009-00009

**TITLE MARKETING REPRESENTATIVE CERTIFICATE
APPLICATION AND RENEWAL**

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

Each of the definitions in the Definitions section is necessary in order to provide a convenient shorthand to refer to entities, information or concepts the repeated use of the full names of which would make the regulation text more cumbersome than need be and, in places, unnecessarily impair readability. In addition, we have defined the words “employ” and “employment” broadly, in order to sweep in all potential employment situations. Because of this choice of language, title marketing representatives cannot avoid the legal obligations imposed by the regulations simply by asserting, for instance, that they are independent contractors and not employees.

Additionally, the definitions section contains a subdivision setting out the hierarchy of the letter and number designations that identify the various levels of headings and subheadings that are used in the regulations. This subdivision is reasonably necessary in order to preserve the organizational relationships among headings and subheadings of various levels when the regulations are printed in the California Code of Regulations, where distinctions among indentation levels are obliterated.

The defined terms, “Live Scan” “Live Scan Vendor,” and “Automated Transaction Identifier (ATI),” are necessary also in order to describe the system the State of California has in place for the purpose of recording, identifying and tracking the fingerprint data of applicants to positions of trust in order to perform a criminal record check. The Department has opted to use this system for reasons of efficiency and practicality; the system has already been implemented by the Department of Justice, and the Department of Insurance currently uses the system in the licensing of other insurance producers, to good effect. In the Department’s experience, use of the Live Scan system ensures that the criminal background checks are conducted thoroughly, and that the results of those checks are properly communicated to the Department, in the format the Department requires.

The necessity of requiring fingerprints in the first place is self-evident from the legal requirements for holding a title marketing representative certificate of registration that are identified in the Notice of Proposed Action: Applicants may without a hearing be denied the certificate if they have been convicted of a felony or certain misdemeanors, for example. It is common knowledge that criminal suspects who have been arrested are routinely photographed and fingerprinted, and that these records are maintained by law enforcement agencies.

Fingerprints are simply the most effective, efficient and reliable means by which the Department can determine whether an applicant has a criminal background that should result in denial of the certificate. Additionally, fingerprints are an effective method by which the Department can in some instances assess whether or not an applicant has demonstrated that he or she is lacking in integrity — another grounds for denial identified in the Notice — if, for instance, the applicant falsely denies that he or she has a criminal record.

The process by which the Department determines whether or not an applicant is entitled to receive provisional authority to operate as a title marketing representative, as called for in SB 133, is set forth in Section 2194.51: Certification. Essentially, in order to be granted such provisional authority, a person must simply apply for the certificate according to the form prescribed by the commissioner. The first step of the application process set forth in the proposed regulations is to complete the Department's online application.

There are a number of reasons why the Department has chosen to require that most of the information most applicants will provide be submitted online. First, the online application is much less expensive for the Department to process than a paper application would be. Paper applications would require additional Department staff to perform the necessary data entry into the Department's database, and paper applications also require additional document handling and storage resources. Secondly, the online application, unlike paper applications, is able to ensure that applicants do not omit to provide required responses; this attribute is especially important in light of the fact that only applicants who have in fact completed the application are entitled to operate as title marketing representatives. Third, the online application is consistent with the Department's Green Initiative, a component of which entails striving to realize the "paperless office," to the greatest practicable extent.

For similar reasons, the statutorily mandated mailing of renewal notices to certificate holders will take place electronically, and not via U.S. mail: Email is a less expensive and more environmentally sensitive option. The regulations specify that the renewal notice will also be emailed to the representative's employer on record with the Department, as an additional means of ensuring that the Department's communication actually reaches the certificate holder.

In designing the proposed regulations the Department had a choice when it came to determining exactly when the provisional authority to operate as on a provisional basis as a title marketing representative would begin. One alternative the Department did not choose was to require that all information called for by the prescribed form of application be submitted to the Department before an applicant would be entitled to operate on the provisional basis; under this system, the application of an applicant who had completed the online component would not have been considered by the Department to be filed and pending, pursuant to Subdivision (e) of Insurance Code section 12418.1, until the Department had actually received the applicant's fingerprint data, together with any written statements or documentation that could be required of the applicant as a result of his or her answers to the background questions on the online application. In some respects this system would have been simpler to administer than the regime specified in the proposed regulations. However, there were concerns about the fairness to applicants of requiring an applicant to wait, perhaps for months, until he or she could obtain any necessary documents, when the applicant had promptly used his or her best efforts to secure them, before

being allowed to pursue his or her chosen vocation. The results of a criminal background check also can be delayed, through no fault of the applicant's own. Accordingly, the proposed regulations specify that the applicant's provisional authority commences at the time the applicant completes the online application.

The Department also had to set forth in the proposed regulations what the effect would be of an applicant's failure to respond to the 15-day deficiency or incompleteness notice called for by Subdivision (d) of Insurance Code section 12418.1. One option would have been for the Department to do nothing in such a case. However, an application that is defective or incomplete typically cannot be processed or evaluated and therefore cannot accurately be characterized as properly filed with the Department or pending under Subdivision (e) of Insurance Code section 12418.1, which requires provisional authority to be granted to applicants having submitted an application that is filed and pending with the Department. For this reason the Department chose to harmonize the two provisions of the bill by providing in the proposed regulations that the provisional authority to operate as a title marketing representative will be suspended in the event the applicant fails to respond within the statutorily required period to the 15-day notice. The regulations do not specify, however, that such a failure to respond will result in the applicant's actually being denied the certificate.

In order to implement the statute it was necessary for the Department to make specific exactly when the clock would start to run on applicants receiving the 15-day notice. The bill provides as follows: "In the event that the application is found to be defective or incomplete, the [D]epartment shall notify the applicant and his or her employer in writing that the application needs to be modified and resubmitted within 15 days of receipt of this written notification." Ins. Code § 12418.1, subd. (e). One possible reading of this language would be that the fifteen day period does not begin until the applicant actually reads the notice, so that in the case of an emailed notice, for instance, the applicant could for an indefinite period prevent the fifteen days from beginning to run, simply by refraining from opening the email message. To preclude this reading, the proposed regulations make clear that the clock begins to run at the time the notification is delivered to the applicant. One possible objection to this approach might be that, through no fault of his own, the applicant might be away from the address, or unable to access the email account, he or she specified on the online application, or may have specified incorrect address information. However, since the statute unambiguously requires that the 15-day notice also be sent to the applicant's employer, it is unlikely that both the applicant and the employer would be unaware that the 15-day notice had been delivered.

Under the proposed regulations applicants not only must submit a timely response to a 15-day notice but must also provide in the response the information requested by the Department in the notice. Otherwise an applicant could effectively evade the requirement to provide information called for by the prescribed form of application while maintaining for an indefinite period his or her provisional authority to operate as a title marketing representative, simply by responding punctually but refraining from providing the requested information. However, for reasons of fairness to the applicant, the universe of required information the failure to provide which can result in suspension of provisional authority (hereinafter, "essential information") has been limited in scope, and each item of such essential information is specifically enumerated in the proposed regulations. Furthermore, the proposed regulations impose upon the Department the

requirement that, in order to exercise its power to suspend provisional authority to operate as a title marketing representative, the Department must have sent the 15-day notice within 30 days after the date the applicant completes the online application. In this way, applicants and their employers are able to ascertain within a reasonable period of time after the online application has been completed that the applicants' provisional authority cannot be suspended until such time as the certificate of registration is either issued or denied.

Included among the essential information is a copy of the applicant's authorization to work in the United States, if the applicant indicated on the online application that he or she is not a citizen of the United States. In order to avoid conflict with pertinent provisions of federal law, neither the Legislature nor the Department can authorize an applicant to work in this country if the employment so authorized would be illegal.

The proposed regulations specify that a valid Automated Transaction Identifier, or ATI, provided to the applicant by a Live Scan vendor is also essential information. Without the ATI, the Department cannot confirm that the applicant has had his fingerprint impressions made according to the prescribed method. However, when it has received the ATI, the Department is able to track the progress of the ensuing criminal records check.

Also included among the enumerated essential information are any written statements that may be required in the event the applicant's answers to the background questions on the online application indicate that grounds for denial of the application may be present. The Department can reasonably conclude from an applicant's failure to provide the called-for written statement detailing the circumstances of the history in question that facts that would result in the denial of the application are indeed present. At the very least, such a failure strongly suggests the applicant has failed to make a good faith effort to provide the information that is required of him or her by the prescribed form of application. It is thus appropriate that such an applicant should, as a result of such failure to be forthcoming with the Department, have his or her provisional authority suspended.

Charging documents, court documents or such other documents as may be required as a result of an applicant's answers to background questions on the online application constitute the final category of essential information. An applicant's failure to provide any such documents does not necessarily indicate the presence of facts that would result in denial of the application are present or that the applicant is deliberately withholding the documents, however; an applicant may indeed have promptly requested the required document from the court or other source of documents yet not be able to produce the documents at the time he or she is required to do so in a 15-day notice, because the applicant, despite using his or her best efforts, may simply be unable to obtain them in time, for reasons beyond the applicant's control. For this reason the proposed regulations provide that an applicant, in order to maintain in effect his or her provisional authority to operate as a title marketing representative, may respond to a 15-day notice requiring charging documents or court documents either by submitting the documents themselves or, if the applicant does not yet have the required documents, by submitting evidence that he or she has, within a reasonable period of time after being notified that the documents must be submitted, at least made a creditable effort to obtain the documents. The regulations specify that such evidence will take the form of copies of the letters or other correspondence the applicant has sent

to the court or other source of documents in an effort to obtain the required documents. The Department can, however, reasonably interpret a failure to provide either the required documents themselves or copies of this correspondence within the requisite timeframe as an indication that the applicant has failed to make a good faith effort to complete his or her application. Such an applicant should accordingly not be rewarded for such a failure to be forthcoming with the Department by being allowed to continue operating under the provisional authority granted to applicants whose applications are complete, filed and pending with the Department.

It is conceivable that an applicant's provisional authority to operate as a title marketing representative might be inappropriately suspended, despite all the provisions in the proposed regulations designed to avoid such a result. For this reason the regulations allow an applicant who has had his or her provisional authority suspended by the procedure discussed above to be granted provisional authority once again, by reapplying for the certificate. However, the regulations provide that an applicant who has had such provisional authority thus suspended two or more times may never again be permitted to operate on a provisional basis as a title marketing representative. Without this provision, it would be possible for applicants to operate indefinitely on a provisional basis while never providing the called-for essential information, simply by reapplying for the certificate each time their provisional authority were suspended. For similar reasons the regulations specify that provisional authority to operate as a title marketing representative is permanently unavailable to an applicant who previously has had a certificate denied, revoked, suspended or limited. It is possible but unlikely that the circumstances that resulted in such an adverse action have disappeared or become sufficiently less determinative since the time of the adverse action so that extending provisional authority to such an applicant would be warranted.

A \$200 application fee and a \$200 renewal fee is specified in Section 2195.52 of the proposed regulations: Fees. The statute provides that the Department may specify a fee not to exceed \$200 which the Department determines to be sufficient to defray its actual costs. Ins. Code § 12418.1, subd. (c). However, the Department estimates that the cost of processing these applications will, in the aggregate, exceed \$200 per application and exceed \$200 per renewal. Accordingly the regulations specify a fee of \$200, both for the initial application and for renewal. The regulations also specify a \$50 late renewal fee, as called for in the statute.

The processing of applications involves not only collecting the information as specified in the proposed regulations and the initial evaluation of that data but also performing the investigative and legal work that is necessary in order to deny applications submitted by applicants who fail to meet the statutory requirements for receiving a certificate. Accordingly the processing of applications will require legal and investigative staff resources, in addition to licensing personnel. The Department's existing automated licensee data system (COSMOS) also requires some modification in order to accommodate the processing of applications for the new certificate. The Department has prepared an estimated cost breakdown, as follows.

Total Annual Estimated Cost for SB 133

Based on 1,500 applicants

Licensing Division

	Monthly Salary	Benefit Rate	*Monthly Cost	**Hourly Cost	Estimated Hours	Annual Cost
Producer Licensing Bureau:						
Program Technician II	\$2,924.00	36.8%	\$ 4,000	\$27.03	750	\$ 20,270
Program Technician III	\$3,270.00	36.8%	\$ 4,473	\$30.23	40	\$ 1,209
SSM I			\$ 8,036	\$54.30	80	\$ 4,344
SSM II			\$ 9,424	\$63.67	160	\$ 10,188
CEA I			\$10,176	\$68.76	80	\$ 5,501
Licensing Background Bureau:						
AGPA	\$4,874.00	37.8%	\$ 6,716	\$45.38	450	\$ 20,421
COSMOS Enhancement:						\$ 30,000
Credit Card Convenience Fees:						\$ 8,000
				Total Licensing Division		<u>\$ 99,933</u>
*Monthly costs were based on mid-step, except for SSM I, II and CEA I which were based on September 08 actual						
**Assume 148 hours per month (1,776 hours/year)						

Investigation Division

2 Associate Insurance Investigator						<u>\$189,500</u>
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Legal Branch

1 Staff Counsel						<u>\$104,000</u>
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Total Annual Cost						\$393,433
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Application Revenue

Fee						\$ 200
Applicants						1,500
Total 08-09 Application Revenue						\$300,000

Renewal Revenue

Fee						\$ 200
Applicants						1,500
Total 11-12 Annual Revenue (and every three years thereafter)						\$300,000

Cost / Revenue Summary

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	Total
Expenditures	\$215,717 *	\$393,433	\$393,433	\$393,433	\$1,396,016
Revenue	\$300,000	--	--	\$300,000	\$600,000

* Assumes half-year (six months) costs of staff, and full costs for COSMOS and credit card convenience fees.

The proposed regulations also require that fees be paid using VISA, MasterCard or American Express, for the reason that accepting payment my other means would be less efficient and would result in increased costs to the Department.

The regulations specify, further, that the applicant is responsible for paying the fees collected by the Live Scan vendor. The additional costs to the Department that would result if the Department were to pay for fingerprinting could not be covered by the fees the Department is permitted to charge, given the expenses the Department will already incur in processing the applications. The regulations are appropriately silent as to whether applicants' employers will reimburse applicants for fees paid to Live Scan vendors.

SB 133 requires that each application will contain a statement signed by an officer of the applicant's employer certifying that the applicant will receive the requisite training within the requisite timeframe, all as specified in the bill. Ins. Code § 12418.1, para. (b)(2). In order to remain faithful to the statute, the proposed regulations also require this signed statement, but specify that it is to be retained by the employer and will be deemed to be part of the application. This provision is necessary because most applicants will complete the prescribed form of application entirely online and will not submit any paper with their application, for the reasons detailed above. Rather than requiring the signed statement to be physically delivered to the Department, the regulations specify the form of the text of the signed statement and require that the text of the statement be transmitted electronically by means of the Department's online business entity services portal. Since the electronic text will not include the physical signature that is required on the hardcopy statement, the prescribed form of the text of the statement requires that the certification be made under penalty of perjury, so that making the online certification will require a level of responsibility and commitment commensurate with what the Legislature intended by requiring that the certification be signed.

The proposed regulations specify that the text of the prescribed training certification described above, as well as the notices of employment and the notices of termination required by Subdivision (f) of Insurance Code section 12418.1, be transmitted to the Department via its online business entity services portal, accessible on the Department's website. The regulations require that in order to use this service, employers must register on the site by specifying information that will allow the Department to ensure that the source of the information transmitted is actually the company it represents itself to be. This required identifying information includes the company's federal employer identification number and either a National Association of Insurance Commissioners number or a California identification number. In addition, the employer must designate a contact person who will be responsible for making the required transmissions to the Department, together with that person's title, phone number and

email address. The designated contact person must in turn use the system to specify his or her username and password, along with a security question and the answer to the security question. All these measures are necessary in order to ensure that the contact person and the employer are indeed who they electronically represent themselves to be when they transmit information to the Department.

There is one piece of paper that the proposed regulations require to be submitted by all applicants: the Department's Live Scan request form. However, the form is to be submitted not to the Department but to the Live Scan vendor making the applicant's fingerprint impressions. The regulations require the use of this form because only when the applicant presents this form to the Live Scan vendor can the Department ensure that it will be able to track the progress of, and receive the results of, the ensuing criminal record check. This is true because the form contains information that will instruct the Live Scan vendor as to the necessary specifications and routing information. The information applicants are required to provide on the form is specified in the regulations and, again, consists entirely of information that is necessary to ensure that the applicant is who he claims to be or to allow the Department to track and receive the results of the criminal record check. The form requires the standard identification information: full legal name (including any former names or aliases), date of birth and place of birth, social security number and driver's license number. The applicant's social security number, in particular, is necessary because the Department of Justice and the Federal Bureau of Investigation each use the social security number as the applicant's identifier when processing the background check. The results of the background check are transmitted to the Department using the applicant's social security number, together with the applicant's name, as the identifier. The form also requires information about the applicant's physical characteristics, so that the Live Scan vendor and others involved in performing the criminal record check will be able to verify that the person fingerprinted is who he or she claims to be; these physical characteristics include gender, height, weight, eye color and hair color. Finally, the Live Scan request form requires the applicant to provide necessary contact information: daytime phone number and residence address.

For the same or similar reasons, the Department's online application described in the proposed regulations also requires much of the same information: full legal name, gender, social security number, date of birth and residence address. However, the online application requires in addition business, mailing and email addresses, in order to ensure that the Department will be able to contact the applicant in the event the application is defective or incomplete, among other reasons.

The online application that is to be completed by applicants for the title marketing representative certificate of registration is in fact substantially similar to the online application that is available to insurance producers applying for most of the other producer licenses or certificates issued by the Department. (Certain modifications are nonetheless necessary in order to tailor the existing system to fit the new certificate; for instance the system must be programmed to include on the checklist that is produced by the system for applicants once they have completed the online application the instructions that they must make and retain copies of the correspondence they send in order to obtain the required court documents.) It is necessary to use the existing system for reasons of efficiency and practicality. It would be impractical to design an entirely new

system specifically for applicants for the new certificate. Furthermore, the legislation expressly makes applicable to title marketing representatives and applicants for the certificate much of the same body of law to which other producers licensed by the Department, and applicants for those licenses, are subject. Specifically, Insurance Code sections 1668 and 1669 are made applicable to applicants for the title marketing representative certificate of registration by Subdivision (a) of Insurance Code section 12418.4. Accordingly the same employment history, licensing history and background questions are necessary for inclusion in the online application described in the proposed regulations as are necessary with regard to applications completed by applicants for the other producer licenses issued by the Department.

Because the online application is used by applicants for a wide variety of licensure, the proposed regulations must require that applicants for the title marketing certificate specify on the online application the “application type” and “license type” corresponding to the title marketing certificate application, so that the applicant’s application will be correctly processed.

It is necessary for the online application to require the applicant’s employment history, because employment history is an invaluable source of information that can be used by the Department in ascertaining whether the applicant is, for instance, “not of good business reputation,” which is just one of many potential grounds for denial of the certificate that employment history can indicate. Ins. Code § 1668, subd. (d). The employment history provided by applicants can also facilitate investigation into an applicant’s past that may be necessary in order to determine whether any of the other grounds for denial of the certificate may be present. Because it might be overly burdensome to require applicants to provide employment history spanning their entire lifetime, the application requires employment history for the five years preceding the completion of the online application. The choice to limit the inquiry specifically to the last five years is informed by the fact that one of the reasons why a certificate may be denied without a hearing is that the applicant has had a vocational or professional license revoked under certain circumstances during the last five years. Ins. Code § 1669, subd. (d). In the event that an applicant did not admit having such a license revoked when asked that question by the online application, the fact of such a revocation might well be suggested by changes in employment during that time.

The application does not apply a time limit to the scope of the inquiry into licensing history, because Subdivision (f) of Insurance Code section 1668, specifying that a license may in some circumstances be denied if the applicant has ever had a professional, vocational or occupational license suspended or revoked, imposes no time limit. The application does not limit the inquiry to apply only to certain types of licenses, because the revocation of any license can readily signal other problematic facts in the applicant’s background (for instance, a criminal history). Also, any such limitation would leave room for equivocation as to whether or not the license in question in fact belonged to one of the specified categories of licenses. It is therefore necessary and appropriate that the online application should inquire into all licenses held by the applicant.

Each of the background questions posed to applicants by the online application goes to one or more grounds for denial set forth in Insurance Code sections 1668 and 1669, which are also the source of the language in which the questions are posed. As has been pointed out, being convicted of a felony or certain misdemeanors is grounds for denial. Accordingly inquiries into

any criminal history that may be part of the applicant's background are necessary. The background questions involving the commission of a crime use language borrowed directly from Subdivisions (a) and (b) of Insurance Code section 1669: "a plea of guilty or nolo contendere ... a final judgment or conviction." Ins. Code § 1669, subds. (a) and (b). Further the questions seek to eliminate any basis for equivocation: "You must disclose all convictions, even if the charges were later dismissed or expunged, your guilty plea was withdrawn pursuant to Penal Code Section 1203.4, or you were placed on probation, received a suspended sentence or just ordered to pay a fine."

It is necessary that the background questions be stated in language that makes equivocation impossible. On the one hand, the Department must discourage evasive answers on the application, so that it can receive the information it needs in order to evaluate it. On the other hand, applicants need to be able to understand exactly what each question is and is not calling for, so that they can avoid making a misstatement on the application, which could be yet another basis for denial of the application, Ins. Code § 1668, subd. (h). For this reason, the online application also advises applicants as follows: "If you fail to disclose all convictions, your application may be denied. You may exclude juvenile offenses tried in juvenile court." Certain omissions on the application qualify as misstatements pursuant to Insurance Code § 1668, because at the end of the online application applicants are required to certify, among other things, that each statement made on the application is "full, true and correct."

In the event an applicant's answer to any of the background questions suggests that facts may be present in the applicant's background that could constitute grounds for denial, the applicant is required to submit both a signed statement explaining each such potentially disqualifying fact and the relevant court documents, charging documents or other documents. The Department needs both the written statement and the court and other documents in order to determine whether the incident in question does or does not in fact constitute sufficient grounds for denying the application. The written statement also affords an opportunity for the applicant to provide any exculpatory information, which the Department considers when making the determination of whether to deny, or to seek to deny, the applicant the certificate.

One of the background questions asks specifically about whether the applicant has complied with 18 U.S.C. 1088, which prohibits certain persons having been convicted of a felony involving dishonesty or breach of trust, or a violation of 18 U.S.C. 1088 itself, from conducting the business of insurance unless they have received the insurance commissioner's consent to do so. Applicants who answer that they have such a conviction are further required to indicate whether or not they have received the necessary consent from the commissioner. In order to avoid conflict with pertinent provisions of federal law, the Department cannot authorize an applicant to be employed in the business of insurance if the employment so authorized would be illegal.

Other background question asks the applicant if he or she has been convicted of a military offense. Certain military offenses may constitute crimes for purposes of Insurance Code sections 1668 and 1669. Even if they do not, however, such a conviction may be illustrative of other qualities in the applicant that can also form the basis for the Department's denial of an application, for instance, being "lacking in integrity." Ins. Code 1668, subd. (e).

Yet another background question inquires as to whether the applicant has been involved in an administrative proceeding involving a professional or vocational license. A positive answer on this question is particularly indicative that the application may need to be denied, because it implicates not only Subdivision (f) of Insurance Code section 1668 but also Subdivisions (c) and (d) of Insurance Code section 1669.

Still another background question is as follows: “Has any business in which you were an owner, partner, officer or director ever been involved in an administrative proceeding (including matters with the Department of Insurance) regarding any professional or occupational license?” A “yes” answer to this question could indicate that “the applicant has permitted [a] person in his employ to violate” the Insurance Code or simply that “the applicant is not of good business reputation,” among other possible grounds for denial. Ins. Code § 1668, subds. (d) and (o). In order to achieve absolute clarity as to exactly what is being asked for, the online application advises the applicant as follows:

“Involved” means having a license censured, suspended, revoked, cancelled, terminated; or being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. “Involved” also means being named a party to an administrative or arbitration proceeding which is related to a professional or occupational license. ‘Involved’ also means having a license application denied or the act of withdrawing an application to avoid denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

This clarification of the question is necessary in order to prevent equivocation by the applicant and to aid the applicant in ensuring that he or she has not omitted any information called for by this question.

Other background questions inquire into the applicant’s history with regard to certain civil actions or arbitrations, certain bankruptcy proceedings, delinquent tax obligations, or disputes or terminations involving the business of insurance. Some of these questions ask whether the applicant has been involved in disputes with insurers or others in connection with the business of insurance. Background question 2194.44(a)(11)(H), for instance, asks the applicant the following: “Has any demand been made or judgment rendered against you for any overdue monies by an insurer, insured, or producer, or have you ever been subject to a bankruptcy proceeding?”. (The online application clarifies that the question is asking not about all bankruptcies but about only bankruptcies involving funds held on behalf of others.) A positive answer on this question indicates that the applicant may have “shown incompetency or untrustworthiness in the conduct of any business, or has ... exposed ... those dealing with him to the danger of loss.” Ins. Code § 1668, subd. (j). The need to ascertain whether or not the applicant possesses this particular potentially disqualifying attribute also provides the rationale for posing background question 2194.44(a)(11)(J): “Are you currently a party to or have you ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?”. Another of these questions asks the applicant the following question: “Have you or any business in which you are or were an owner, partner, officer, or director ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged

misconduct?”. A “yes” answer to this question could indicate that “the applicant has permitted [a] person in his employ to violate” the Insurance Code or simply that “the applicant is not of good business reputation,” among other possible grounds for denial. Ins. Code § 1668, subds. (d) and (o). One more question asks whether or not the applicant has ever received certain notices of delinquent taxes where the tax obligation is not the subject of a repayment agreement. A positive answer to this question may indicate that “the applicant is lacking in integrity” or is “not of good business reputation.” Ins. Code § 1668, subds. (d) and (e).

Finally, the application requires the applicant to certify under penalty of perjury that the applicant has read the online application and knows what he or she has said on the online application. The applicant must certify that the information the applicant has provided on the online application is full, true and correct. The applicant must certify, further, that he or she understands that any false statement on the online application or on any document submitted in support of the application may result in denial of the certificate, as provided by relevant provisions of law, which are cited in the certification. This certification is necessary in order to convey to the applicant the seriousness with which it is appropriate to consider the information he or she has provided, or will provide, to the Department, and to inform the applicant of the potentially very grave consequences of not being entirely forthcoming.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of this article.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would mandate the use by companies, and by title marketing representatives, of computers with an internet connection. However, the regulations do not specify particularly the specific computer technologies or equipment that must be used.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. One alternative that was considered involved refraining from granting to applicants provisional authority to operate as a title marketing representative until such time as all supporting information called for on the online application had been submitted to the Department. Certain applicants are required, for example, to submit court documents on the basis of the applicant’s response to background questions on the online application. However, applicants often have little or no control as to the amount of time it takes them to obtain such documents, despite have made their best efforts to obtain them from the court. Accordingly, the Department concluded that it would in some cases be unreasonable to impair the ability of applicants to continue pursuing their livelihood until such time as they could obtain the documents. Performance standards were also considered but were rejected as an unreasonable and impracticable alternative in the context of regulations that seek to specify the procedure by which title marketing representatives must apply to receive the certificate of registration.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected, in part, because they would be impracticable in light of the statutorily prescribed function of prescribing a form of application.

PRENOTICE DISCUSSIONS

The Commissioner has not conducted prenotice public discussions pursuant to Government Code section 11346.45, because the proposed regulations do not involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period. Except for the relatively brief provisions that have been added regarding renewal of the certificate, the proposed regulations are substantively identical to the corresponding emergency regulations with which the title insurance industry has complied since January 1, 2009, when the emergency regulations became effective.